Supreme Court, U.S.
FILED
OCT 22 1999
CLERK

No. 99-511

# In the Supreme Court of the United States

**FRANK SANDERS,**

*Petitioner,*

v.

**VILLAGE OF DIXMOOR, ILLINOIS,**

*Respondent.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

## RESPONDENT'S BRIEF IN OPPOSITION

ROBERT MARC CHEMERS*
DANIEL G. WILLS
PRETZEL & STOUFFER, CHARTERED
One South Wacker Drive
Suite 2500
Chicago, Illinois 60606
(312) 346-1973

*Counsel for Respondent, Village of Dixmoor, Illinois*

*Counsel of Record

Midwest Law Printing Company/Photex — Chicago — (312) 321-0220

6PP

## PARTIES TO THE PROCEEDING

The petition accurately lists the parties to the proceeding.

## TABLE OF CONTENTS

PAGE

Parties to the Proceeding ..... i

Table of Contents ..... ii

Table of Authorities ..... iii

Statement of the Case ..... 1

Reasons for Denying the Writ ..... 2

Conclusion ..... 3

## TABLE OF AUTHORITIES

**Cases Cited:** PAGE(S)

*Federal Deposit Ins. Corp. v. Meyer*,
781 F.2d 1260 (7th Cir. 1986) ..... 2

*Lewis v. United States*,
1991 U.S. Dist. LEXIS 6717 (1991) ..... 2

*Libertes v. County of Cook*,
709 F.3d 1122 (7th Cir. 1983) ..... 3

*Manor Healthcare Corp. v. Guzzo*,
894 F.2d 919 (7th Cir. 1990) ..... 3

## STATEMENT OF THE CASE

The petition seeks this Court's review of the Seventh Circuit's opinion affirming the district court's grant of summary judgment in favor of respondent on petitioner's claim, under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.*, that he was suspended from his position as a part-time police officer with respondent because of his race. Pet. 1.

Respondent moved for summary judgment on petitioner's complaint before the district court, noting that petitioner failed to present sufficient evidence of either a hostile work environment claim or a claim for direct discrimination. Pet. App. 2. In his three-page response, petitioner addressed only his hostile work environment claim and failed to address the issue of direct discrimination. Pet. App. 4. The district court thus noted that petitioner was not arguing a claim for direct discrimination but only one for a hostile work environment. Pet. App. 12. The district court then found that respondent was entitled to summary judgment. Pet. App. 15. Petitioner neither notified the district court that he was also arguing a claim for direct discrimination nor sought reconsideration of the district court's ruling. Pet. App. 3.

Instead, petitioner appealed to the Seventh Circuit, wherein he did not raise his hostile work environment claim but instead suggested that he had presented evidence of direct discrimination. Pet. App. 3. The Seventh Circuit affirmed, noting that petitioner had waived any argument against the district court's finding on the hostile work environment claim by not addressing it on appeal, and that he had waived any argument regarding direct discrimination by failing to alert the district court of the theory. Pet. App. 3, 4.

Petitioner's petition for rehearing and suggestion for rehearing en banc was denied.

## REASONS FOR DENYING THE WRIT

Petitioner incorrectly frames the issue as whether the Federal Rules of Civil Procedure require the filing of a motion to reconsider to preserve for appellate review a district court's error in granting a motion for summary judgment, suggesting that such a motion must be filed in every case. However, the Seventh Circuit held only that petitioner had waived his argument regarding direct discrimination because he failed at *any* time to notify the district court that he was asserting such a claim. The filing of a Rule 59 motion to reconsider was simply offered by the Seventh Circuit as one way in which petitioner could have done so.

In fact, the Seventh Circuit indicated that if petitioner had notified the district court that he was asserting such a claim prior to judgment being entered or when the court entered judgment, he would not have had to file any motion because he would have preserved the issue for appeal. In any case, a Rule 59 motion is not applicable in connection with every summary judgment motion decided by a district court. Rather, such a motion is appropriate only where there is a manifest error of law or fact or the moving party intends to present newly discovered evidence. *Federal Deposit Ins. Corp. v. Meyer*, 781 F.2d 1260, 1268 (7th Cir. 1986); *Lewis v. United States*, 1991 U.S. Dist. LEXIS 6717 (1991).

The applicable case law, as noted by the Seventh Circuit, is to the effect that arguments in opposition to summary judgment not properly raised in the district court

are waived. *Manor Healthcare Corp. v. Guzzo*, 894 F.2d 919, 922 (7th Cir. 1990); *Libertes v. County of Cook*, 709 F.3d 1122, 1126 (7th Cir. 1983). Here, petitioner failed to raise before the district court, at any time, the argument regarding direct discrimination. Further, his claim that he "relied on direct evidence of race discrimination to oppose respondent's motion for summary judgment," Pet. 2, is disingenuous as the only evidence offered, the alleged statement by respondent's chief, would apply both to a claim of a hostile work environment and a claim of direct discrimination. However, before the district court, petitioner relied upon this evidence only to support his claim of a hostile work environment. Pet. Sec. 4. Therefore, there exists no basis upon which to grant his petition.

## CONCLUSION

For the reasons given above, the petition should be denied.

Dated: October 22, 1999

Respectfully submitted,

ROBERT MARC CHEMERS*
DANIEL G. WILLS
PRETZEL & STOUFFER, CHARTERED
One South Wacker Drive
Chicago, Illinois 606060
(312) 346-1973

*Counsel for Respondent,*
*Village of Dixmoor, Illinois*

*Counsel of Record